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OFFICE OF PETITIONS

In re Patent No. 7,274,301 :
Issue Date: September 25, 2007 :
Application No. 09/890,893 :
Filed: November 9, 2001 :
Attorney Docket No. **965785** :

NOTICE

This is a notice regarding your request filed July 25, 2011, for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **NOT ACCEPTED**.

It appears that the petition was not properly signed by a person having authority to prosecute in the above-identified patent. Therefore, the request can not be accepted at this time.

Petitioner's attention is directed to 37 CFR 1.33(b), which states.

(b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

(1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);

(2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;

(3) An assignee as provided for under § 3.71(b) of this chapter; or

(4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

Therefore, as the petition is not signed by all the inventors and the record herein fails to disclose that petitioner herein (Richard Johnston) was ever given a power of attorney to act on behalf of inventor Anthony David Smith, Nicholas Bernard Body, Felix Anton Harold Collins, , **or that he is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b)**, the petition is considered to not be properly signed. As it appears that Mr. Johnston is signing on behalf of an assignee, compliance with 37 CFR 3.73(b) must be satisfied. In this regard, 37 CFR 3.73(b) provides:

(1) In order to request or take action in a patent or trademark matter, the assignee must establish its ownership of the patent or trademark property of paragraph (a) of this section to the satisfaction of the Director. The establishment of ownership by the assignee may be combined with the paper that requests or takes the action. Ownership is established by submitting to the Office a signed statement identifying the assignee, accompanied by either:

(i) Documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment * * * For patent matters only, the submission of the documentary evidence must be accompanied by a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or

(ii) A statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

(2) The submission establishing ownership must show that the person signing the submission is a person authorized to act on behalf of the assignee by:

(i) Including a statement that the person signing the submission is authorized to act on behalf of the assignee; or

(ii) Being signed by a person having apparent authority to sign on behalf of the assignee, e.g., an officer of the assignee.

(c) For patent matters only:

(1) Establishment of ownership by the assignee must be submitted prior to, or at the same time as, the paper requesting or taking action is submitted.

(2) If the submission under this section is by an assignee of less than the entire right, title and interest, such assignee must indicate the extent (by percentage) of its ownership interest, or the Office may refuse to accept the submission as an establishment of ownership.

In view of the above, and as it appears that Mr. Johnston is signing the petition an assignee, then compliance with 37 CFR 3.73(b) must be satisfied. A blank certificate under 37 CFR 3.73(b) is enclosed with this decision for petitioner's convenience.

As to item (1) above, the reply is considered defective also for the reasons stated above (that the paper (reply) must be signed by a proper party; *i.e.*, all the inventors or an assignee of the entire interest and, if signed by an assignee of the entire interest, must satisfy the provisions of 37 CFR 3.73(b).

In sum, petitioner the petition must be signed by all the inventors, **unless** petitioner herein is the assignee of the entire right, title and interest in the instant application, then compliance with 37 CFR 3.73(b) must be satisfied, which can be accomplished by completion of the enclosed certificate under 37 CFR 3.73(b).

Inquiries related to this communication should be directed to the undersigned at (571) 272-4584.



JoAnne Burke
Petitions Examiner
Office of Petitions

Enclosure: Blank Certificate Under 37 CFR 3.73(b)

cc: Renate Taylor
Intellectual Property
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